

April 3, 2018

Mr. Devin Leary  
Human & Rohde Inc.  
512 Virginia Ave.  
Towson MD 21286

Re: KDP Properties, 10540 Philadelphia Road  
Forest Conservation Variance  
Tracking # 06-18-2683

Dear Mr. Leary:

A request for a variance from Baltimore County's Forest Conservation Law for the referenced property was received by the Department of Environmental Protection and Sustainability (EPS) on March 27, 2018. The request proposes to remove the following specimen trees in fair to good condition for construction of a commercial development: 1 *Quercus alba* (30-inch diameter at breast height-DBH), 2 *Acer rubrum* (35 and 39-inch DBH). In addition, a *Morus alba* (35-inch DBH) in poor condition is proposed to be removed. Of the specimen trees proposed for removal, 2 are located outside of the forest. A 36-inch DBH *Quercus palustris* near the southern property line is to be retained. 0.9-acres of high priority forest is being retained in a protected easement on the western part of the site. The property drains to tributaries of White Marsh Run, a Use IV stream.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116 of the Baltimore County Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One of the three criteria under Subsection 33-6-116 (d) must be met, and all three of the criteria under Subsection 33-6-116 (e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116 (d)(1) of the Code) requires that the petitioner show that the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of his property. The applicant proposes to construct a commercial development on this former residential property. Due to site constraints and the infrastructure requirements, this development could not be constructed as proposed without removal of the 4 specimen trees and may not provide a reasonable return. However, other types of viable commercial uses could be developed without impacts to these trees. Therefore, the petitioner would not be deprived of all beneficial use of the property, and this criterion is not met.

The second criterion (Subsection 33-6-116 (d) (2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions in the neighborhood. This request for a variance is due to the location of the specimen trees on the

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referenced property relative to the proposed commercial development. The development proposed is based on these unique conditions of the property, and not from general conditions of the neighborhood. Therefore, this criterion is met.

The third criterion (Subsection 33-6-116 (d) (3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The property is bordered by commercial uses and a highway. Therefore, the proposed commercial development of the site would be compatible with the neighborhood, and this criterion is met.

The fourth criterion (Subsection 33-6-116 (e) (1) of the Code) requires that the granting of the special variance will not adversely affect water quality. Development of the site must comply with all forest buffer requirements to protect streams, wetlands, and 100-year floodplains associated with White Marsh Run. In addition to the forested buffer area being retained, an existing non-forested buffer area is to be planted with native trees. Also, forest conservation requirements must be met, including payment of a fee-in-lieu to the Baltimore County Forest Conservation Fund for specimen tree mitigation. Stormwater management must also be provided in accordance with current County regulations. Based on this, water quality impacts can be minimized by providing mitigation and stormwater management. Therefore, this criterion is met.

The fifth criterion (Subsection 33-6-116 (e) (2) of the Code) requires that the special variance request does not arise from a condition or circumstance, which is the result of actions taken by the petitioner. This request is based on the specimen tree locations relative to the proposed development. Also, there has been no work conducted on the property that would have required this request. Therefore, this criterion is met.

The sixth criterion (Subsection 33-6-116 (e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. The development must meet all forest conservation requirements outlined in this Code, including mitigation for specimen trees approved for removal. Therefore, this criterion is met.

Based upon our review, this Department finds that the required variance criteria have been met. Therefore, the requested variance is hereby approved, in accordance with Section 33-6-116 of the Baltimore County Code, with the following conditions:

1. Mitigation for the removal of the 1 specimen tree in fair to good condition that is outside of the existing forest must be met by payment of a fee-in-lieu of \$1,343.00 into the Baltimore County Forest Conservation Fund. No mitigation will be required for the tree in poor condition. The final forest conservation plan for this project must be submitted and approved by EPS prior to issuance of any permits. The approved forest conservation worksheet, and all required notes, including information concerning the protection of the specimen tree to be retained must be included in this plan.

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2. On all project plans, label specimen trees as “retain” or “remove” and add the following note:

A forest conservation special variance was granted by Baltimore County Department of Environmental Protection and Sustainability on April 3, 2018 to allow for the removal of 4 specimen trees on this project site. Mitigation was provided by meeting all forest conservation requirements as outlined on the forest conservation plan for the project, including a fee-in-lieu payment for the specimen trees to be removed outside existing forest. If any specimen tree shown on the plan “to remain” is proposed to be removed, special variance approval or written authorization must first be obtained from the Department of Environmental Protection & Sustainability.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and an amended variance request.

Please have the property owner sign the statement at the end of this letter and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please contact Paul Dennis at (410) 887-3980.

Sincerely yours,

David V. Lykens  
Deputy Director

DVL/pad

c: Marian Honeczy MDDNR

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I/we agree to the above conditions to bring my/our property into compliance with Baltimore County Forest Conservation Law.

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Contract Purchaser

Date

Printed Name

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